MONTANA LEGISLATIVE HISTORY

Chapter 313 1997

Bill H 234 S _____ Original bill & history ✓ C

H. Committee on Judiciary			S. Committee on Judiciary		
Hearing Date(s)	1-24	✓ C	Hearing Date(s)	3-5	✓ C
		C			C
		C			C
		C			C
Date Out	1/27	✓ C		3/5	✓

Did this bill originate in an interim committee? ____Yes ____No

Committee _____ Report _____

LEGISLATIVE HISTORIES

The 1997 Montana Legislature dramatically changed the nature of legislative minutes. This altered format continues with the 1999 legislative minutes. The minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are fuller in content.

Exhibits, which include written statements, attendent information, roll call votes, roll call attendance, a list of those from the public who were present, and specific action taken on legislative bills, will be available only through the Historical Society Archives, 444-4774, and from a CD-ROM produced by the Legislative Services Division, 444-3064.

Just as in the 1997 legislative session, the 1999 House and Senate committee hearings were recorded. For information on accessing the tapes, or purchasing them, contact the Archives, 444-4774.

If you have concerns over the format of these legislative minutes, it is suggested that you contact your state legislators.

4/05 MISSED DEADLINE FOR 71ST DAY TRANSMITTAL
DIED IN COMMITTEE

HB 234 INTRODUCED BY BITNEY, ET AL. *LC0142 DRAFTER: PETESCH*

SUBMIT TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION PROVIDING THAT CRIMINAL LAWS MUST BE BASED ON PRINCIPLES OF PUBLIC SAFETY AND RESTITUTION FOR VICTIMS AS WELL AS PREVENTION AND REFORMATION

1/11	INTRODUCED		
1/11	FIRST READING		
1/11	REFERRED TO JUDICIARY		
1/24	HEARING		
1/31	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/03	2ND READING PASSED	98	1
2/04	3RD READING PASSED	97	1
	TRANSMITTED TO SENATE		
2/05	FIRST READING		
2/05	REFERRED TO JUDICIARY		
3/05	HEARING		
3/07	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/12	2ND READING CONCURRED	37	13
3/13	3RD READING CONCURRED	35	15
	RETURNED TO HOUSE WITH AMENDMENTS		
4/08	2ND READING AMENDMENTS CONCURRED	91	8
4/09	3RD READING CONCURRED AS AMENDED	83	17
4/12	SIGNED BY SPEAKER		
4/14	SIGNED BY PRESIDENT		
	CHAPTER NUMBER 313		
	EFFECTIVE DATE: CONTINGENT UPON VOTER APPROVAL		

HB 235 INTRODUCED BY RANEY *LC0866 DRAFTER: STERNBERG*

APPROPRIATE $1 MILLION ANNUALLY FROM THE INTEREST OF THE RESOURCE INDEMNITY TRUST FUND TO THE FUTURE FISHERIES IMPROVEMENT PROGRAM TO ASSIST IN PAYING THE COSTS OF MOVING OR REMOVING SOURCES OF POLLUTION FROM STREAMBANKS AND LAKESHORES

1/13 INTRODUCED
1/13 FIRST READING
1/13 REFERRED TO APPROPRIATIONS
1/27 FISCAL NOTE REQUESTED
2/01 FISCAL NOTE RECEIVED
2/05 FISCAL NOTE PRINTED
2/14 TABLED IN COMMITTEE
3/28 MISSED DEADLINE FOR 67TH DAY TRANSMITTAL
DIED IN COMMITTEE

HB 236 INTRODUCED BY RANEY, ET AL. *LC0443 DRAFTER: STERNBERG*

REVISE THE MISSION OF THE DEPARTMENT OF FISH, WILDLIFE, AND PARKS TO CLARIFY THAT MAINTENANCE OF PRESENT STATE PARKS AND FISHING ACCESS SITES HAS PRIORITY OVER IMPROVEMENT AND DEVELOPMENT OF THOSE PARKS AND SITES

1/13 INTRODUCED
1/13 FIRST READING
1/13 REFERRED TO FISH, WILDLIFE & PARKS
1/13 FISCAL NOTE REQUESTED
1/17 FISCAL NOTE RECEIVED

INTRODUCED BY Bitney

House BILL NO. 234

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION PROVIDING THAT RESTITUTION FOR VICTIMS AND PUNISHMENT OF CRIMINALS ARE THE PRINCIPLES FOR CRIMINAL LAWS AND PROVIDING THAT THE LAW MAY DETERMINE WHETHER THE RIGHTS OF CRIMINALS ARE RESTORED."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article II, section 28, of The Constitution of the State of Montana is amended to read:

"**Section 28.** ~~**Rights**~~ **Punishment for crime -- rights of the convicted.** (1) ~~Laws for the~~ Restitution for victims and punishment of crime shall be ~~founded on~~ the principles ~~of prevention and reformation~~ upon which criminal laws are based.

(2) ~~Full~~ The law may provide that the rights ~~are~~ of persons may be restored ~~by~~ upon termination of state supervision for any offense against the state."

NEW SECTION. **Section 2. Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1998 by printing on the ballot the full title of this act and the following:

[] FOR revising the principles for criminal laws and the rights of the convicted.

[] AGAINST revising the principles for criminal laws and the rights of the convicted.

-END-

HOUSE JUDICIARY

- BILL NO -	REFERRED -	HEARING -	OTHER CONSIDERATION DATES -	EXECUTIVE ACTION/DATE/VOTE -------	REREFERRED ----	DATE READ
HB0195	TASH, BILL		REQUIRE STATE AGENCY PAY FEE TO FILE CERTAIN WARRANTS, LIENS, AND ABSTRACTS			
	1/09	1/20		PASS AS AMENDED 01/27 VOTE: 16-1	TAXATION	1/28
HB0199	KNOX, DICK		NOTIFY BILL SPONSOR OF RULE PROPOSAL TO IMPLEMENT BILL			
	1/09	1/27		DO PASS 01/27 VOTE: 17-0		1/28
HB0200	AHNER, CHRIS		SURREPTITIOUS TAKING OF VISUAL IMAGE IN CERTAIN ROOMS IN PLACE OF BUSINESS			
	1/09	1/28		PASS AS AMENDED 01/28 VOTE: 20-0		1/29
HB0208	MARSHALL, ROD		INCREASE DUI PENALTIES			
	1/09	1/22		PASS AS AMENDED 01/30 VOTE: 18-0		1/31
HB0215	ORR, SCOTT		EXPAND DEFINITION OF POLICE DOG TO INCLUDE SEARCH AND RESCUE			
	1/10	1/28		PASS AS AMENDED 01/28 VOTE: 18-2		1/29
HB0218	CLARK, ROBERT		REVISE REFERENCE TO FED. GUN-FREE SCHOOL ZONE ACT IN INDIVID. LICENSURE LAW			
	1/10	1/20		DO PASS 01/20 VOTE: 18-0		1/20
HB0222	ANDERSON, SHIELL		DEATH PENALTY SENTENCING AND POSTCONVICTION PROCEEDINGS REVISIONS			
	1/10	2/04		PASS AS AMENDED 02/11 VOTE: 11-8		2/12
HB0231	BARNHART, BEVERLY		REVISE CHILD CUSTODY & VISITATION; PARENTING PLAN REQUIRED			
	1/11	1/29	02/06/97 tABLED 10-7	PASS AS AMENDED 02/18 VOTE: 14-6		2/18
HB0234	BITNEY, ROD		PROPOSED CONSTITUTIONAL AMENDMENT TO DEFINE PRINCIPLES FOR CRIMINAL LAWS			
	1/11	1/24		PASS AS AMENDED 01/27 VOTE: 16-0		1/31
HB0239	TROPILA, JOE		PROHIBIT A NOTARY PUBLIC FROM NOTARIZING THE NOTARY'S OWN SIGNATURE			
	1/13	1/22		PASS AS AMENDED 01/30 VOTE: 16-0		1/31
HB0243	DENNY, MATT		ALLOW ASSIGNMENT OF CIVIL CLAIMS FOR PENALTIES FOR SHOPLIFTING			
	1/13	2/06		PASS AS AMENDED 01/20 VOTE: 20-0		2/11
HB0251	HOLLAND, DON		ALLOW JURY COSTS TO BE ASSESSED AGAINST A PARTY IN CERTAIN CIVIL CASES			
	1/14	2/03		PASS AS AMENDED 02/05 VOTE: 19-1		2/07

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 24, 1997, at 8:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Daniel W. McGee, Vice Chairman (Majority) (R)
Rep. Diana E. Wyatt, Vice Chairman (Minority) (D)
Rep. Chris Ahner (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Duane Grimes (R)
Rep. H.S. "Sonny" Hanson (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Bill Tash (R)

Members Excused: Rep. Jon Ellingson (D)
Rep. Brad Molnar (R)
Rep. Loren L. Soft (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 163, HB 234, POSTED 1/15/97
Executive Action: HB 168 DO PASS AS AMENDED
HB 137 DO PASS AS AMENDED

HEARING ON HB 163

Opening Statement by Sponsor: REP. JOHN JOHNSON
{Tape: 1; Side: A; Approx. Time Count: 1.5; Comments: This is set of minutes is recorded on 90-minute tapes.}

EXHIBIT 9 - Provided to the committee prior to the hearing.

Questions From Committee Members and Responses:
{Tape:1; Side:B; Approx. Time Count: 13.4 - Tape 2; Side A; 30.0}

Closing by Sponsor: **REP. JOHNSON**
{Tape: 2; Side: A; Approx. Time Count: 30.1}

HEARING ON HB 234

Opening Statement by Sponsor: **REP. ROD BITNEY - EXHIBIT 10**
{Tape: 2; Side: A; Approx. Time Count: 31.6}

Proponents' Testimony:

RICK DAY, Director, Department of Corrections
{Tape: 2; Side: A; Approx. Time Count: 38.8}

Opponents' Testimony:

RON WATERMAN - EXHIBIT 11
{Tape:2; Side: A; Approx. Time Count: 42.6 - Tape 2; Side B; 1.7}

BETTY WADDELL, Montana Association of Churches
{Tape: 2; Side: B; Approx. Time Count: 1.8}

CHRIS IMHOFF, Montana League of Women Voters - EXHIBIT 12
{Tape: 2; Side: B; Approx. Time Count: 7.5}

RUSSELL HILL, Montana Trial Lawyers Association
{Tape: 2; Side: B; Approx. Time Count: 10.0}

MARILYN PARKER - EXHIBIT 13
{Tape: 2; Side: B; Approx. Time Count: 13.7}

Questions From Committee Members and Responses:
{Tape: 2; Side: B; Approx. Time Count: 15.3 - 27.0}

Closing by Sponsor: **REP. BITNEY**
{Tape: 2; Side: B; Approx. Time Count: 27.1}

EXECUTIVE ACTION ON HB 168

Motion: **REP. DIANE SANDS moved HB 168 DO PASS.**

Motion/Vote: **REP. SANDS moved the amendments presented on 1/21/97.** The motion carried 16 - 1, REP MC GEE voting no.

Motion/Vote: **REP. SANDS moved further amendments, EXHIBIT 14.**
The motion carried 15 - 2, REPS. MC GEE and CLARK voting no.
{Tape: 2; Side: B; Approx. Time Count: 32.9}

Motion: **REP. SANDS moved HB 168 DO PASS AS AMENDED.**

EXHIBIT 10
DATE 1/24/97
HB 234

Amendments to House Bill No. 234
First Reading Copy

Requested by Representative Bitney
For the Committee on

Prepared by Greg Petesch
January 24, 1997

1. Title, line 6.
Following: "VICTIMS"
Insert: ", PUBLIC SAFETY, PREVENTION, REFORMATION,"

2. Page 1, line 14.
Following: "victims"
Insert: ", public safety, prevention, reformation,"

EXHIBIT 11
DATE 1/24/97
HB 234

TESTIMONY IN OPPOSITION TO HB 234

I am Ronald F. Waterman, an attorney practicing law in Helena, Montana. I appear on my own behalf in opposition to HB 234. This bill is poor public policy and the modification to the Montana Constitution, if presented to the voters and approved, will adversely affect all Montana citizens.

The proposal before you removes from Article II, Section 28 of the Constitution the words "prevention and reformation" and it removes the restoration of full rights to an individual upon termination of state supervision for any offense against the state, leaving to the Legislature to define what rights are to be restored to an individual who has completed their sentence and after all state supervision has terminated.

I expect that the origin for this proposal is the perception in the minds of some individuals that incarceration at Montana State Prison is easy and that the individuals held there have an easy time while they are serving their sentences. Much legislation this session and in past sessions has been based upon this perception. I am here to tell you that this perception is incorrect.

I have represented a number of individuals now serving time at Montana State Prison. I have also been in a variety of other prisons in other states throughout the west and I am familiar with prison conditions generally in both state and federal prisons, especially in the west. While Montana State Prison is better than some prisons, it is worse than most, especially regarding educational, job training and access to counseling and other preventive and reformation programs.

Serving time in Montana State Prison is hard time even now. Especially those individuals who are classified to serve on the high side, under the custodial restrictions applied, experience and serve a sentence which is neither easy nor comfortable. Presently there are only a few programs available for inmates to address their education, job training and other needs and too few programs addressing inmates' psychological needs.

We send individuals who violate the criminal statutes to prison for punishment. Presently, while they serve their sentence, too many inmates are punished by the conditions they confront at Montana State Prison. While prison is intended to have an impact upon individuals, hopefully in a majority of cases, the experience of being sentenced to prison will have a positive effect upon an individual's life and they will come out of prison with both the desire to avoid returning to prison and the ability to avoid a return to prison.

Individuals released from Montana State Prison now too often come out angry and bitter, damaged by the prison experience and incapable of avoiding a return to prison. The State of Montana already produces individuals damaged, adversely affected by their stay in prison. This bill only assures that the State will produce more damaged, angry and dangerous individuals.

When you combine this fact with the removal of the full restoration of civil rights upon termination of state supervision and leave to the Legislature the right to restrict an individual's civil rights, even after all other state supervision ends, then the damage this bill will cause is even greater. It is extremely difficult for an individual, discharged from state prison, to reenter our communities. An individual on parole confronts extreme difficulty in finding employment and housing. It is extremely hard, even for those individuals with families who support them to stay out of prison after their release. Once the entire sentence is served, an individual should have their civil rights fully restored; this bill removes that promise and gives this Legislature and future Legislatures the ability to restrict the rights which individuals who have completed their sentences can recover.

A major problem inmates and parolees have is the lack of connection with a community. To the extent this bill increases the distance individuals have with the community in which they live, the more difficult it will be for individuals to remain crime free.

You are not the first body to address these issues. Twenty-five years ago the drafters of the Montana Constitution debated these very issues. They understood why individuals incarcerated needed to be afforded rights to receive preventive and restoration instruction and programs. They also understood the need to punish individuals for crimes committed. And, with Parole Board support they recommended that individuals who had completed all of their sentences and state supervision should be restored to full rights as citizens of this State.

The body of information about corrections has not changed over the years, to suggest that laws for the punishment of crime should not be founded upon prevention and reformation. Indeed, repeatedly studies of this subject all underscore the fact that inmates who have opportunities for education, for job training and employment while incarcerated and for psychological counseling while imprisoned, require lower levels of supervision while in prison and are less likely to be returned to supervision once released.

Nor has this State's experience disproved the value of prevention and restoration programs and training for inmates. Our prison population has been growing, not because these training

programs have been offered and are in effect. Rather, despite the constitutional language, there has been virtually no prevention and reformation opportunities extended to inmates incarcerated at Montana State Prison. Indeed the conditions at Montana State Prison only minimally extend basic humane treatment to the inmates confined there.

Several years ago the State of Montana was sued for violating inmate human rights due to inadequacies in the medical, dental and mental health services extended. The State of Montana wisely concluded it should stipulate to entry of a Consent Judgment, giving the federal court supervisory powers over improvements in these fundamental programs addressing health needs. Even today, several years after the Consent Judgment was entered, Montana State Prison is not in full compliance with the Judgment. Although it is moving in the right direction in most areas, the State's compliance with the Judgment is most notably lacking in addressing the mental health needs of the inmates. The State of Montana is not extending prevention and reformation programs when it barely is satisfying the fundamental rights of inmates to receive adequate and appropriate medical, dental, and mental health care.

In conclusion, I submit that HB 234 should be rejected because it extends poor public policy for the treatment of inmates and because it is contrary to the best interests of the citizens of the State of Montana. If positive programs are removed, if inmates are simply left to be warehoused and "punished", then Montana's citizens will reap the economic and safety impacts of this decision. This session underscored the costs of years of neglect of the correctional system and what occurs when affirmative programs are not implemented to address the needs of inmates. Due to the lack of programs at Montana State Prison now, inmates are incarcerated for longer periods of time and once released find it difficult to successfully complete their parole. A part of the present correctional crisis has its origin in the manner in which Montana State Prison has been operated in the past. If the State of Montana makes the conditions worse at the prison, then the result will be greater expense to Montana's taxpayers.

Additionally, just punishing inmates without focusing upon prevention and reformation means that the inmates who are released will be more of a danger to the Montana citizenry.

Thus, I request that you ask yourself whether it is good public policy to increase the correctional costs for the taxpayers of the state while at the same time reducing the safety of Montana citizens. If you do not believe this would be good public policy, then I urge you to vote NO on HB 234.

League of Women Voters of Montana

EXHIBIT 12
DATE 1/24/97
HB 234

TESTIMONY PRESENTED BY THE LEAGUE OF WOMEN VOTERS OF MONTANA

House Judiciary Committee
Friday, Jan. 24, 1997
H.B. 234 by Bitney

The League of Women Voters believes that the guiding principle of the criminal justice system should be to protect society from criminal behaviors while providing services to enable prisoners to become law abiding citizens. Therefore we urge you to leave Montana's constitutional language regarding the rights of the convicted intact, ie. "Laws for the punishment of crime shall be founded on the principles of prevention and reformation."

While the League definitely supports restitution for victims because the aim of restitution is to compensate victims for their losses while teaching offenders financial responsibility, we do not feel restitution should be elevated to the status of one of the principles upon which our criminal justice system is based. Nor should punishment be elevated to the status of a principle. It should continue to be considered a means to ensure prevention of harm to the public and rehabilitation of the criminal into a law abiding citizen.

It is important to consider whether focusing our criminal justice system on punishment and restitution to victims is an effective direction to move in during the present overwhelming growth in funding demands for corrections. For example, substance abuse has been found to be a significant factor in 80-85% of criminal cases in numerous studies with 40-45% rearrest rates for those incarcerated without treatment, while those who were directed into effective treatment programs fairly consistently are showing a rearrest rate of 12-6%. Boiled down to its essence, rearrest means: the public safety has been violated again and the state must pour more money down the drain for police, court, and corrections costs for the unreformed offender.

The League of Women Voters of Montana urges a DO NOT PASS recommendation on H.B. 234.

Thankyou.

Chris Imhoff
Legislative Chair, LWVMT

Mr. Chairmen + members of the committee

EXHIBIT 13
DATE 1/24/97
HB 234

My name is Marilyn Parker.
I would like the committee to know that I am the daughter of a victum. My father was killed by a drunk driver.
I believe it's wrong to focuses on restitution and punishment. I believe the only way to eliminate crimes in the future is by counciling and rehabilitation programs.

I would like the committee to also know that I am the wife of an Inmate held in Spur, Texas. Out of the 250 inmates transfered to Texas he is one of the 117 inmates that is eligible for parole.

He is a non violent offender who was placed in prision on a parole violation. He owes no restitution on his crime, only child support. but because involuntary incarceration is not grounds to lower child support payments we are looking at huge payments upon his release.

I hope the committee will keep in mind that inmates as well as victums have families. The only way to prevent crimes in the future is by counciling and rehabilitation.

Thank you.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By CHAIRMAN BOB CLARK, on January 27, 1997, at 10:00 AM, in Room 312-1.

ROLL CALL

Members Present:

Rep. Bob Clark, Chairman (R)
Rep. Shiell W. Anderson (R)
Rep. Ellen Bergman (R)
Rep. William E. Boharski (R)
Rep. Aubyn A. Curtiss (R)
Rep. Jon Ellingson (D)
Rep. Duane Grimes (R)
Rep. Joan Hurdle (D)
Rep. Deb Kottel (D)
Rep. Linda McCulloch (D)
Rep. Brad Molnar (R)
Rep. Gerald Pease (D)
Rep. Diane Sands (D)
Rep. Liz Smith (R)
Rep. Loren L. Soft (R)
Rep. Bill Tash (R)

Members Excused: Rep. Chris Ahner (R)
Rep. Daniel W. McGee, Vice Chair (R)
Rep. Diana E. Wyatt, Vice Chair (D)

Members Absent: Rep. H.S. "Sonny" Hanson (R)

Staff Present: John MacMaster, Legislative Services Division
Joanne Gunderson, Committee Secretary

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 199, POSTED 1/20/97
Executive Action: HB 199 DO PASS
HB 195 DO PASS AS AMENDED
HB 234 DO PASS AS AMENDED

HEARING ON HB 199

Opening Statement by Sponsor: **REP. DICK KNOX**
{Tape: 1; Side: A; Approx. Time Count: 1.5; Comments: This set of minutes is recorded on 90-minute tapes.}

Vote: The motion carried 16 - 1, REP. BOHARSKI voting no, REP WYATT voting aye by proxy.

EXECUTIVE ACTION ON HB 159

Motion/Vote: **REP. DUANE GRIMES moved HB 159 be referred to a subcommittee.** The motion carried by unanimous vote.
{Tape: 1; Side: B; Approx. Time Count: 0.4}

EXECUTIVE ACTION ON HB 234

Motion: **REP. SHIELL ANDERSON moved HB 234 DO PASS.**

Motion: **REP. ANDERSON moved amendments to HB 234 to the title and line 14.**

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 1.7 - 21.4}

Motion: **REP. BOHARSKI moved a substitute amendment to page 1, lines 13 and 14.**
{Tape: 1; Side: B; Approx. Time Count: 21.5}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 23.0}

Vote: The motion passed 17 - 0, REP. WYATT voting by proxy.

Motion: **REP. BOHARSKI moved HB 234 DO PASS AS AMENDED.**
{Tape: 1; Side: B; Approx. Time Count: 25.8}

Motion: **REP. AUBYN CURTISS moved to amend line 22 regarding restitution.**

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 26.0; Comments: REP. CURTISS withdrew the amendment and the committee continued to discuss the bill as amended.}

Motion: **REP. DEB KOTTEL moved to amend HB 234 by deleting subsection 2.**
{Tape: 1; Side: B; Approx. Time Count: 32.4}

Discussion:
{Tape: 1; Side: B; Approx. Time Count: 32.5 - 34.3}

Vote: The motion carried 16 - 0, REP. WYATT voting aye.
{Tape: 1; Side: B; Approx. Time Count: 34.4; Comments: REP. MOLNAR was absent at the time of the vote. This is recorded for purposes of explaining changes in total numbers voting.}

Motion: **REP. BOHARSKI moved HB 234 DO PASS AS AMENDED.**

Motion/Vote: **REP. CURTISS moved to amend HB 234 on lines 22 and 23.** The motion carried 16 - 0, REP. WYATT voting by proxy.
{Tape: 2; Side: A; Approx. Time Count: 0.2; Comments: REP. MOLNAR was absent at time of vote on this amendment. }

Motion/Vote: **REP. BOHARSKI moved HB 234 DO PASS AS AMENDED.** The motion carried 16 - 0, REP. WYATT voting by proxy.
{Tape: 2; Side: A; Approx. Time Count: 1.3; Comments: REP. MOLNAR was absent at time of this vote.}

Discussion:
{Tape: 2; Side: A; Approx. Time Count: 1.5; Comments: John MacMaster provided the committee information on HB 44.}

Motion/Vote: **REP. MC CULLOCH moved to adjourn.** The motion carried by unanimous vote.

SENATE JUDICIARY

BILL NO	REFERRED	HEARING	OTHER CONSIDERATION DATES	EXECUTIVE ACTION/DATE/VOTE	REREFERRED	DATE READ
HB0231	3/03	3/19		CONCUR VOTE:10-0	3-26	3/27
HB0234	BITNEY, ROD 2/05	3/05	PROPOSED CONSTITUTIONAL AMENDMENT TO DEFINE PRINCIPLES FOR CRIMINAL LAWS	CONCUR AS AMENDED VOTE:7-3	3-5	3/07
HB0239	TROPILA, JOE 2/05	2/20	PROHIBIT A NOTARY PUBLIC FROM NOTARIZING THE NOTARY'S OWN SIGNATURE	CONCUR VOTE:10-0	2-20	2/20
HB0243	DENNY, MATT 2/17	3/13	ALLOW ASSIGNMENT OF CIVIL CLAIMS FOR PENALTIES FOR SHOPLIFTING	CONCUR VOTE:10-0	3-13	3/14
HB0251	HOLLAND, DON 2/12	3/12	ALLOW JURY COSTS TO BE ASSESSED AGAINST A PARTY IN CERTAIN CIVIL CASES	CONCUR VOTE: 10-0	3-12	3/13
HB0257	KOTTEL, DEB 2/04	3/07	LIMIT TRIAL BY JURY ON APPEAL IN MISDEMEANOR CASES	CONCUR VOTE:9-1	3-7	3/07
HB0264	MOLNAR, BRAD 2/14	3/20	REQUIRE YOUTH COURT NOTIFY SCHOOL OF STUDENT WHO VIOLATES STATUTE	CONCUR AS AMENDED VOTE:7-3	3-27	3/28
HB0268	KOTTEL, DEB 2/19	3/06	CHEMICAL TREATMENT OF CERTAIN SEX OFFENDERS	CONCUR AS AMENDED VOTE: 9-1	3-14	3/17
HB0276	KOTTEL, DEB 3/03	3/18	NOTIFY ALLEGED FATHER OF CLAIM OF PATERNITY BY MOTHER	CONCUR AS AMENDED VOTE:	3-18	3/20
HB0292	GRADY, ED 2/19	3/04	PROVIDE FOR CERTIFICATION OF A PEACE OFFICER WHO CHANGES EMPLOYMENT STATUS	CONCUR VOTE: 10-0	3-4	3/05
HB0299	BOHARSKI, WILLIAM 3/03	3/17	AMEND CONST. TO PROHIBIT PREFERENTIAL TREATMENT BASED ON RACE OR SEX	TABLED ON 03/18 VOTE:8-2		
HB0303	BOHARSKI, WILLIAM 3/03	3/17	AMEND MCA TO PROHIBIT PREFERENTIAL TREATMENT BASED ON RACE OR SEX	TABLED ON 03/18 VOTE:7-3		
	CURTISS, AUBYN		COMPENSATION FOR RULE OR ORDINANCE REDUCING REAL PROPERTY VALUE			

MINUTES

MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN BRUCE D. CRIPPEN**, on March 5, 1997, at 9:05 A.M., in the Senate Judiciary Chambers (Room 325) of the State Capitol, Helena, Montana.

ROLL CALL

Members Present:

Sen. Bruce D. Crippen, Chairman (R)
Sen. Lorents Grosfield, Vice Chairman (R)
Sen. Al Bishop (R)
Sen. Sue Bartlett (D)
Sen. Steve Doherty (D)
Sen. Sharon Estrada (R)
Sen. Mike Halligan (D)
Sen. Ric Holden (R)
Sen. Reiny Jabs (R)
Sen. Walter L. McNutt (R)

Members Excused: None

Members Absent: None

Staff Present: Valencia Lane, Legislative Services Division
Jody Bird, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: HB 98, posted
HB 222, posted
HB 234, posted
Executive Action: HB 98, HB 195, HB 234

VICE CHAIRMAN LORENTS GROSFIELD ASSUMED THE CHAIR AT THIS POINT.

HEARING ON HB 98

Sponsor: **REP. BOB CLARK, HB 8, Ryegate**

Proponents: **Mike Mahoney, Warden, Montana State Prison**
Beth Baker, Department of Justice

Opponents: **Scott Crichton, Executive Director, Montana ACLU**
Sharon Hoff, Montana Catholic Conference

HEARING ON HB 234

Sponsor: REP. ROD BITNEY, HD 77, Kalispell

Proponents: David Ohler, Counsel, Department of Corrections

Opponents: None

Opening Statement by Sponsor: **REP. ROD BITNEY, HD 77, Kalispell** read from prepared testimony. HB 234 would amend Article II, Section 28 of the Montana Constitution to provide crime victims' restitution. The Constitution doesn't mention victims, and we need to treat criminals as criminals and victims as victims. Victims need to have the same rights as criminals.

The bill empowers victims via: 1) compensating victims; 2) promoting public safety; and 3) punishing criminals. The Montana Board of Crime Control reported $19 million in losses to crimes, with only $3.5 million recovered, but they believe the amount of loss is actually much more. Seventy-five percent of crimes are committed by repeat offenders at a cost about $250 billion per year nationally. Over $80 billion is spent on public safety.

The result of this bill would be increased quality of life. I ask the Committee to support this legislation.

{Tape: 2; Side: B; Approx. Time Count: #31.8; Comments: 11:40 a.m.}

Proponents' Testimony: **David Ohler, Counsel, Department of Corrections.** The Department believes the needs of victims are important and encourages the Committee to support this bill.

Opponents' Testimony: None

Questions From Committee Members and Responses: **SEN. DOHERTY.** In proposing a constitutional change, will it increase the amount of dollars by even $1, the ability of the Board of Crime Control to compensate victims better? **REP. BITNEY.** I believe so.

SEN. DOHERTY. We currently have a crime victims restitution fund, so how will one additional dollar be added to crime victim restitution. **REP. BITNEY.** I can't answer, but I believe it is important to set this trend.

SEN. DOHERTY. It seems the language change you are requesting would make it part of a laundry list and de-emphasize punishment. Why is this a good idea? **REP. BITNEY.** It was not my intention to de-emphasize this.

SEN. DOHERTY. If we left Article II, Section 28 the same and added "prevention and public safety", would this meet your goal? **REP. BITNEY.** We want to emphasize punishment and restitution.

SEN. DOHERTY. The simpler way is to add "public safety and restitution" to current statute, rather than change the Constitution. **REP. BITNEY.** I can't answer that.

SEN. CRIPPEN. What was the vote on this bill? **REP. BITNEY.** The vote was 97-1 in the House on third reading, and it was unanimous in the House Judiciary Committee.

Closing by Sponsor: **REP. BITNEY** asked the Committee to support the bill, and said he would need someone to carry it.

{Tape: 3; Side: A; Approx. Time Count: #00; Comments: 11:50 a.m.}

EXECUTIVE ACTION ON HB 98

Motion: **SEN. ESTRADA MOVED HB 98 BE CONCURRED IN.**

Discussion: **SEN. DOHERTY.** I question making it apply to cases on death row, as to whether it will reduce appeals. Why not make it prospective? I didn't get a good answer from the Attorney General, but I don't believe it will accomplish their goal concerning death row.

SEN. BARTLETT. Beth Baker said they did discuss this at length, but that each time a new execution date is set, the inmate gets a new choice of method. I don't believe this will help the Department of Corrections in having to carry out a hanging in current death row cases.

SEN. CRIPPEN. The alternative is more appeals.

Vote: **SEN. ESTRADA'S MOTION THAT HB 98 BE CONCURRED IN CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SEN.S BARTLETT AND DOHERTY WHO VOTED NO.**

EXECUTIVE ACTION ON HB 195

Amendments: **sb019501.avl - EXHIBIT 9**

VICE CHAIRMAN GROSFIELD. I asked Valencia Lane to draft an amendment - sb019501.avl. The House feels these amendments won't jeopardize the bill.

Discussion: **Ms. Phippen, Clerks of Court.** We oppose the amendment. To charge different agencies separately for the same function goes against my grain, but I don't know if it's truly a problem. The Child Support Enforcement Division is very opposed to amendment 9 regarding filing of liens in district court. We believe the title companies, etc, would have major concerns. **VICE CHAIRMAN GROSFIELD.** I will not offer the amendments.

Motion/Vote: **VICE CHAIRMAN GROSFIELD MOVED HB 195 BE CONCURRED IN. THE MOTION CARRIED UNANIMOUSLY.**

{Tape: 3; Side: A; Approx. Time Count: #10.5; Comments: 12 Noon}

EXECUTIVE ACTION ON HB 234

Discussion: **SEN. DOHERTY.** I spoke with **REP. BITNEY** and the way the House did this was not very clear. So I am proposing to amend the bill, leaving the heading as it is, and amending in the old language, plus adding "public safety and restitution". The difference would be not taking away the laws for punishment of a crime as the primary thing. The language I'm proposing is cleaner and simpler, and uses existing language. **REP. BITNEY** has no problem with my proposal.

SEN. HALLIGAN. If we put "public safety" in the bill, can a criminal sue if we don't have enough prison space? **Valencia Lane.** They do sue now. This might get us into the morass we had with full access to the Courts or tort claims regarding equal protection, because of a constitutionally recognized right. I haven't, however, had the time to give this serious thought.

Motion: **SEN. DOHERTY MOVED TO ADOPT THE AMENDMENTS HE PROPOSED IN DISCUSSION.**

Discussion: The amendment addresses only Subsection (1) of the Constitution. Are there any changes to Subsection (2)? **SEN. DOHERTY.** No, the current language is fine.

SEN. BARTLETT. **SEN. ESTRADA** and I have had this experience on the Sentencing Commission. As current standards, the two principles are "prevention" and "reformation", and these had to be given equal weight, as they're both in the Constitution. So, the Committee needs to bear that possibility in mind, if we add **SEN. DOHERTY's** language.

VICE CHAIRMAN GROSFIELD. If you read Section 1 of the Montana Constitution, it says "prevention and reformation". I like **SEN. DOHERTY's** amendment, but I don't like the bill as it is. I am concerned that it could provide lucrative material for various lawyers to work with, as well as new careers.

Vote: **SEN. DOHERTY'S MOTION TO AMEND HB 234 CARRIED UNANIMOUSLY.**

Motion: **SEN. ESTRADA MOVED HB 234 BE CONCURRED IN AS AMENDED.**

Discussion: **SEN. HALLIGAN.** Why can't we just table this bill? **Valencia Lane.** The first committee to hear it can table it, but once it is possible to get 100 votes in the other House it can be sent to that House.

Vote: **SEN. ESTRADA'S MOTION THAT HB 234 BE CONCURRED IN AS AMENDED CARRIED WITH ALL MEMBERS VOTING AYE EXCEPT SENATORS BISHOP, BARTLETT, AND JABS WHO VOTED NO.**

HOUSE BILL NO. 234

INTRODUCED BY BITNEY, AHNER, MOOD, SLITER, OHS, KEENAN, KNOX, BEAUDRY, HOLLAND, JORE, DEBRUYCKER, COBB, CLARK, SMITH, ANDERSON, STOVALL, MERCER, ORR, CURTISS, MILLS, WAGNER, BOHLINGER, REHBEIN, KITZENBERG, ELLIS, ADAMS, BANKHEAD, MASOLO, LAWSON, WALTERS, TREXLER, WISEMAN, MCGEE, HAYNE, TAYLOR, BARNETT, WELLS, BOOKOUT, DENNY, BERGMAN, GRINDE

A BILL FOR AN ACT ENTITLED: "AN ACT SUBMITTING TO THE QUALIFIED ELECTORS OF MONTANA AN AMENDMENT TO ARTICLE II, SECTION 28, OF THE MONTANA CONSTITUTION PROVIDING THAT ~~PUBLIC SAFETY, RESTITUTION FOR VICTIMS AND, PUNISHMENT OF CRIMINALS,~~ CRIMINAL LAWS MUST BE BASED ON PRINCIPLES OF PUBLIC SAFETY AND RESTITUTION FOR VICTIMS AS WELL AS PREVENTION, AND REFORMATION ~~ARE THE PRINCIPLES FOR CRIMINAL LAWS AND PROVIDING THAT THE LAW MAY DETERMINE WHETHER THE RIGHTS OF CRIMINALS ARE RESTORED~~."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Article II, section 28, of The Constitution of the State of Montana is amended to read:

"**Section 28. ~~Rights Punishment for crime~~ CRIMINAL JUSTICE POLICY -- rights of the convicted.** (1) ~~Laws for the Restitution PUBLIC SAFETY, RESTITUTION for victims and,~~ LAWS FOR THE punishment of crime~~, PREVENTION, AND REFORMATION~~ shall be ~~founded on~~ FOUNDED ON the principles ~~of prevention and reformation upon which criminal laws are based~~ OF PREVENTION, REFORMATION, PUBLIC SAFETY, AND RESTITUTION FOR VICTIMS.

(2) ~~Full The law may provide that the~~ FULL rights ~~are of persons may be~~ ARE restored ~~by upon~~ BY termination of state supervision for any offense against the state."

NEW SECTION. **Section 2. Submission to electorate.** This amendment shall be submitted to the qualified electors of Montana at the general election to be held in November 1998 by printing on the ballot the full title of this act and the following:

[] FOR revising the principles ~~for~~ OF criminal laws ~~and the rights of the convicted~~ TO INCLUDE PUBLIC SAFETY AND RESTITUTION.

[] AGAINST revising the principles ~~for~~ OF criminal laws ~~and the rights of the convicted~~ INCLUDE PUBLIC SAFETY AND RESTITUTION.

-END-